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6 **UNITED STATES DISTRICT COURT**  
7 **DISTRICT OF NEVADA**  
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9 SHAUNTAY JERMAINE WHEATON,

10 Petitioner,

11 vs.

12 MR. MCDANIEL, et al.,

13 Respondents.  
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Case No. 3:06-CV-00397-LRH-(VPC)

**ORDER**

15 Before the Court are Petitioner's Application for Certificate of Appealability (#66) and  
16 Respondents' Opposition (#69). To appeal the denial of a petition for a writ of habeas corpus,  
17 Petitioner must obtain a certificate of appealability, after making a "substantial showing of the  
18 denial of a constitutional right." 28 U.S.C. §2253(c).

19 Where a district court has rejected the constitutional claims on the  
20 merits, the showing required to satisfy §2253(c) is straightforward:  
21 The petitioner must demonstrate that reasonable jurists would find the  
district court's assessment of the constitutional claims debatable or  
wrong.

22 Slack v. McDaniel, 529 U.S. 473, 484 (2000); see also James v. Giles, 221 F.3d 1074, 1077-79 (9th  
23 Cir. 2000). The Court finds that Petitioner meets this standard for all the issues that he wants to  
24 present on appeal.

25 IT IS THEREFORE ORDERED that the Application for Certificate of Appealability (#66) is  
26 **GRANTED** for the following issues:

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1. Whether the trial court erred in denying Petitioner's Motion to Suppress his statements in violation of his Fifth, Sixth and Fourteenth Amendment Constitutional Rights to Due Process, Fair Trial, Counsel, and Freedom from Self-Incrimination because the statements Petitioner made during interrogation were obtained in violation of his Constitutional rights and thus inadmissible?

2. Whether the Prosecutor committed misconduct when he improperly vouched for a witness and quoted the Bible during closing argument in violation of Mr. Wheaton's right to Due Process under the Fifth and Fourteenth Amendments to the United States Constitution?

3. Whether the instruction defining malice created an improper presumption, thus minimizing the State's burden of proof and rendering Petitioner's conviction and sentence invalid under the Federal Constitutional guarantees of Due Process under the Fifth and Fourteenth Amendments to the United States Constitution?

DATED this 9<sup>th</sup> day of December, 2009.



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LARRY R. HICKS  
UNITED STATES DISTRICT JUDGE